

# **EXHIBIT AA - REDACTED**

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REDACTED

## EVOX IMAGES LICENSE AGREEMENT

This EVOX Automotive Library™ License Agreement, including the attached Schedules and Appendices collectively the "Agreement", is entered into between EVOX Productions, LLC, a Delaware limited liability company as Licensor ("EVOX"), and KAYAK Software Corporation ("Licensee"). EVOX and Licensee (collectively, the "Parties"), enter into this Agreement as of the Effective Date. Capitalized terms, unless defined elsewhere in this Agreement, shall have the meaning ascribed to them in Appendix 1. This Agreement will remain in effect for a period of the Term unless otherwise terminated in accordance with the provisions of this Agreement.

## RECITALS

- Whereas, EVOX creates and owns libraries of images and videos of Model Year 2000 through current Model Year automobiles, including libraries known as the "EVOX Automotive Image Library™, U.S. Edition" (AIL).
- Whereas, Licensee wishes to license certain content from EVOX for use with Licensee's products and/or services.

Now therefore, for good and valuable consideration, EVOX and Licensee hereby enter into this Agreement.

**LICENSE GRANT** EVOX hereby grants to Licensee a nonexclusive, revocable, nontransferable, non-assignable limited license (the "License") during the Term to use the Licensed Materials within the Scope of Use, and for the payment of Fees and subject to all of the terms and conditions of this Agreement.

By these signatures, the Parties, through their duly authorized representatives, enter into this Agreement:

## EVOX Productions, LLC (Licensor):

**Signature:**   
David Falstrup (Mar 18, 2014)  
**Email:** contracts@evox.com  
**Title:** CEO

## Notification Address:

EVOX Productions LLC  
2363 Pacifica Place,  
Rancho Dominguez, CA 90220

**Contact:** David Falstrup  
**e-mail:** dfalstrup@evox.com  
**Phone:** 310.605.1400  
**Fax:** 310.631.0972

## KAYAK Software Corporation (Licensee):

**Signature:**   
Tim Knowing (Mar 18, 2014)  
**Email:** tknowling@kayak.com  
**Title:** VP - Global Business Development

## Notification Address:

Kayak Software Corporation  
7 Market Street  
Stamford CT 06902

**Contact:** Tim Knowing  
**e-mail:** Tknowling@kayak.com  
**Phone:**  
**Fax:**

## SCHEDULE 1: ORDER SCHEDULE

## 1. EVOX AGREEMENT RECORD NUMBER: 20140305(KAYAK) Portal

## 2. EFFECTIVE DATE: March 18, 2014

**3. TERM:** The Initial Term of this Agreement shall be **twelve (12) months** commencing on the Effective Date. Following the Initial Term, the Term of this Agreement shall be on a month-to-month basis, all Fees shall be increased by fifteen (15%) percent, not inclusive of any applicable Fee increases as set forth in Section 13.4 of Appendix 1 of this Agreement. Licensee may elect to commit to a twelve (12) month Term following the Initial Term ("Renewal Term"), provided that Licensee notifies EVOX of such election thirty (30) days prior to the end of the Initial Term. Notwithstanding any applicable Fee increases as set forth in Section 13.4 of Appendix 1 of this Agreement, Fees for such Renewal Term will remain unchanged.

**3.1.** During the Initial Term of this Agreement, either Party may terminate this Agreement at their convenience ("Termination for Convenience") with a thirty (30) day written notice to the other Party.

## 4. LICENSED MATERIALS:

**4.1. Products:** AIL 2A – Front ¾ Colorized

**4.2. Formats:** JPG and PNG formats in up to 640 x 480 resolution as made generally available in the AIL.

**4.2. Licensed Vehicles:** The Licensed Vehicles provided in accordance with the terms of the Agreement are limited to the vehicles made generally available in the AIL for the Model Years and Franchised Brands listed below:

**a) Model Years Licensed:** MY 2006 to the most current Model Year.

**b) Franchise Brands Licensed:** All available Franchise Brands.

## 5. DELIVERIES: Minimum of one (1) delivery per week via the Evox FTP site. Licensee Delivery E-mail Address: \_\_\_\_\_

**6. RIGHTS AND SCOPE OF USE:** Portal Website Use: (a) Use in a research application on a single Portal Website; (b) Use as Accent Graphics on a single Portal Website. The Licensee's Rights and Scope of Use are further defined in the Agreement, Schedules and Appendices.

**7. GUARANTEED MINIMUM MONTHLY FEES:**

**8. CALCULATED MONTHLY FEES:** For purposes of clarity, "UV's" or "Unique Visitors" shall mean unique visits to the top-level domain name of the Licensee Portal.

Monthly UV's	Monthly Fee

**9. REPORTING AND TRACKING REQUIREMENTS**

"Reporting Requirements" are defined in the following Sections 9.1 to 9.3:

**9.1.** Licensee will provide EVOX with monthly reports no later than the fifteenth (15<sup>th</sup>) day of the first month of the Term. Upon the fifteenth (15<sup>th</sup>) day of each month following the first month of the Term, until completion of the Term, Licensee shall provide EVOX with applicable Monthly Portal Usage Reports as specified in Section 9.2.1. of this Schedule 1. Required reports will be sent via email to [ail\\_reporting@evox.com](mailto:ail_reporting@evox.com).

**9.2. Reporting Requirements**

**9.2.1.** Automotive Portal Reports - Reporting of usage will include, at a minimum, the following information for each Portal Website:

- If applicable, name and address of Sublicensee
- All applicable URLs,
- Unique Visitors per month,
- Types of Licensed Materials used,
- Portal Use(s) for each Portal Website
- PDF copy of the report on unique page views per webpage containing Licensed Materials.

**9.3. INTENTIONALLY DELETED**

**9.4.** Failure to Report - Without limiting other remedies available to EVOX under this Agreement, in the event Licensee fails to fulfill any of the Reporting Requirements of Licensed Materials in accordance with this Schedule 1, EVOX may suspend delivery of the Licensed Materials hereunder until such non-compliance is fully cured, and if such non-compliance is not fully cured within thirty (30) days after any such suspension, EVOX may terminate this Agreement.

**9.5** Notwithstanding any of the foregoing, the parties agree that nothing in this Section 9 shall preclude EVOX from pursuing any available remedies to it, including without limitation, claims for copyright infringement.

**10. OTHER NOTES:** Certain modifications to the Standard Terms and Conditions are identified in this Section 10 of the Order Schedule and override the Standard Terms and Conditions contained elsewhere in the Agreement.

**10.1.** Licensee may remove EVOX Trademark and EVOX logos from the Licensed Materials, provided that the following copyright attribution appears on every webpage/screen containing a Licensed Material and is displayed in the lower portion of the webpage frame: **"Vehicle images are licensed from EVOX Images"**

**APPENDIX 1: STANDARD TERMS AND CONDITIONS**

**1. DEFINITIONS**

The following capitalized terms, if used in this Agreement, will have the following meanings:

**1.1.** "Appendix" or "Appendices" means one (1) or more appendices attached to and incorporated into this Agreement.

**1.2.** "Carry-Over" means the Licensed Materials for a certain Model Year vehicle that are used as Licensed Materials for a vehicle from a different Model Year.

**1.4.** "Dealer" or "Dealership" means an automotive retailer or automotive retail group with one or more physical retail locations. Dealerships without a physical retail location are Portals.

**1.4.1.** "Dealer-Developer" means any business entity that provides products or services to Dealers.

**1.5.** "Dealer Rooftop" means a single Dealership retail location identifiable by a separate street address. Dealerships with multiple street addresses are considered to have multiple Dealer Rooftops.

**1.6.** "Dealer Website" means any Dealer website viewed by members of the public accessing such public facing Dealer website, or any Dealer website viewed internally by the Dealership. Separate website landing

pages for different Franchise Brands, shall be considered a separate Dealer Website.

**1.7. "Effective Date"** is the effective date of this Agreement as identified in Schedule 1: Order Schedule of this Agreement.

**1.8. "Consumer"**, means a Third Party that uses or views the Licensed Materials, other than a Sublicensee or a third party user of Licensed Materials under this Agreement.

**1.9. "EVOX Competitor"** means any party engaged in developing, producing or licensing to others any Enhanced Images. For purposes of this Agreement, OEMs, dealerships and their advertising agencies (excepting website developers) shall not be considered EVOX competitors.

**1.10. "Fees"** means the fees and charges payable by Licensee to EVOX described in Schedule 1: Order Schedule of this Agreement plus any other applicable charges as authorized in this Agreement.

**1.10.1. "Standard Rates"** means the rates established by EVOX before application of any discounts. EVOX reserves the rights to change the Standard Rates at its sole discretion.

**1.10.2. "Calculated Monthly Fees"** means the Fees including certain surcharges and discounts, as described in Section 8 of Schedule 1: Order Schedule to this Agreement, which are calculated before the consideration of any minimum fees due.

**1.10.3. "Guaranteed Minimum Monthly Fees"** means the minimum Fees due from Licensee to EVOX under Section 7 of Schedule 1: Order Schedule to this Agreement.

**1.10.4. "Product"** means an individual grouping of Licensed Materials as identified on Schedule 1: Order Schedule. For example "#A) AIL Splash Images Set" is a Product.

**1.11. "Franchise Brand"** means an OEM brand name.

**1.12. Images:**

**1.12.1. "In-Studio Images"** means a standardized set of images for a quantity of vehicles created in an enclosed and artificially lit environment (actual or simulated) other than images sourced through an OEM.

**1.12.2. "Colorized Photos"** means a set of images with different colors created in post-production to represent different color options for the vehicle.

**1.12.3. "360-Degree-Images"** means a combined set of images capable of showing a sequence of either interior or exterior view angles of the same vehicle.

**1.12.4. "In-Studio-Video"** means video (or a set of videos) or multi-frame animations created for a quantity of vehicles in an enclosed and artificially lit environment (actual or simulated); showing either interior or exterior (or combined) views of the vehicles, except for video's that also contain a 90% or more running footage of the vehicle being driven over the road.

**1.12.5. "Enhanced Images"** means In-Studio Images, Colorized Photos, 360-Degree-Images and/or In-Studio-Videos.

**1.13. "Image Updates"** means any revisions to the Licensed Materials such as fixes, corrections, enhancements (including, without limitation, any and all CGI and newly created Enhanced Images, revisions and also additional images of current Model Year automobiles that EVOX includes, at its sole discretion

**1.14. "Licensed Materials"** means all vehicle images and/or video created by any method or combination of methods as described in the Order Schedule and Schedules to this Agreement whether or not such images and/or videos have been created as of the Effective Date, together with all Image Updates with respect thereto.

**1.15. "Licensee Products"** means content or products designed, developed, managed and served by Licensee.

**1.16. "Model Year" or "MY"** means the automotive manufacturing industry new model introduction year (e.g., Model Year 2014 automobiles are available in the calendar year of 2013).

**1.17. "OEM"** means an original equipment manufacturer of automobiles (e.g. Ford Motor Company).

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**1.18. "Portal"** means a website other than an OEM website or a Dealership website.

**1.18.1. "Automotive Portal"** means a Portal that provides substantial research information on automobiles. For example, www.edmunds.com is an Automotive Portal.

**1.19. "Scope of Use"** means the permitted uses, limitations and prohibitions of use of the Licensed Materials as set forth in Schedule 1: Order Schedule (Scope of Use) and elsewhere in this Agreement.

**1.20. "Sublicense"** means any license or contract for use issued by Licensee or any level of Sublicensee for Licensed Materials pursuant to this Agreement.

**1.21. "Sublicensee"** means the holder of a license from the Licensee or any level of sublicensee as permitted by this Agreement.

**1.22. "Term"** means the term specified in the Order Schedule of this Agreement, including the Initial Term and any Renewal Terms.

**1.22.1. "Initial Term"** means the Initial Term as defined in the Order Schedule.

**1.22.2. "Renewal Term(s)"** means any extension(s) or renewal(s) to the Term, other than the Initial Term.

**1.23. "Third Party"** means any individual or entity other than EVOX and Licensee.

**1.24. "CGI"** means computer generated images, including but not limited to, computer-generated static, moving or interactive images of objects or scenes, and/or the creation of computer models representing the outside or inside shape or form of an object or a scene. Such computer models may be created by any method or combination of methods at EVOX's sole discretion.

## 2. SUB-LICENSING RIGHTS AND RESTRICTIONS:

Licensee shall not have the rights to Sublicense or distribute the Licensed Materials, except as specifically authorized in this Agreement:

**2.1. No Resellers.** Sublicensees may not grant further licenses or distribution rights to the Licensed Materials or any sublicense of the Licensed Materials, except as specifically authorized in this Agreement.

**2.2. Sublicense Requirements.** Any Sublicense or grant of usage rights by Licensee (i) will contain limitations and terms and conditions no less protective of the Licensed Materials and EVOX's rights than those applicable to Licensee set forth in this Agreement, and (ii) will be revocable, terminable, nonexclusive, nontransferable, non-assignable and (iii) will not Sublicense or grant rights unless such rights are specifically granted to Licensee in this Agreement.

**2.3.** Licensee shall not enter into Sublicenses for Licensed Materials or agreements for use of Licensed Materials for periods greater than twelve (12) months beyond the end of the then current Term or Renewal Term of the Agreement.

**2.4.** After delivery of a notice from EVOX of its election not to renew the Agreement for any further Renewal Term(s), Licensee will not enter into any Sublicense or agreements for use of Licensed Materials that extends beyond the end of the Term of this Agreement and such portion of any such Sublicense or agreements for use of Licensed Materials that extends beyond the Term shall be null and void.

**2.5.** Licensee will not renew, or extend the term of, any Sublicense or agreements for use of Licensed Materials prior to thirty (30) days before original expiration date of the Sublicense or agreements for use of Licensed Materials unless written approval is received from either the EVOX Chief Executive Officer in advance of the renewal.

## 3. ADDITIONAL LIMITATIONS

**3.1.** No license is granted to use the Licensed Materials in any manner in any present or future format except for uses and formats



expressly permitted by the definition of Scope of Use in this Agreement.

**3.2.** Licensee has the right to resize, crop and color correct images and videos, provided that (i) the EVOX copyright notice and logo, to the extent required to be displayed in connection with all Licensed Materials under this Agreement, are not altered, and (ii) the Licensed Materials are neither displayed nor resized to sizes larger than the sizes delivered by EVOX. No other modifications are permitted. For the sake of clarity, unless specifically authorized in the applicable Scope of Use Sections of Schedule 1 of this Agreement, Licensee may not add alternative backgrounds to Licensed Materials.

**3.3.** Licensee will not use the Licensed Materials in any way that could be considered defamatory, pornographic, libelous, immoral, obscene, fraudulent, or illegal.

**3.4.** EVOX acknowledges and agrees that the License granted herein may include limited rights to make and use derivative works during the Term of this Agreement. However, Licensed Materials may not be included in any derivative works following the term of any Sublicense or agreements granted by Licensee for use of Licensed Materials.

#### **4. EXCLUSIVE AND PROHIBITED USE**

**4.1.** During the Term of this Agreement or of any Sublicenses or agreements to provide Licensed Materials to third parties, Licensee will not use, distribute, market, promote, develop or produce (for the purposes of licensing or sublicensing or providing Licensed Materials to any Third Parties) any Enhanced Images or the Licensed Materials, other than as authorized by the conditions under this Agreement, and will not work as an agent or partner with any other company or individual for the purpose of using, distributing, marketing, promoting, developing or producing (for the purposes of licensing or sublicensing or providing Licensed Materials to any Third Parties) Enhanced Images or the Licensed Materials, other than as authorized under this Agreement.

#### **5. TRADEMARKS**

**5.1.** LICENSEE ACKNOWLEDGES THAT EVOX DOES NOT CONVEY TO LICENSEE ANY PERMISSIONS, CLEARANCES, RELEASES OR OTHER RIGHTS RELATED TO THE ENTITIES, PRIVATE PROPERTIES, PRODUCTS, TRADEMARKS, TRADE NAMES, LOGOS OR BRANDS DEPICTED IN THE LICENSED MATERIALS, IF ANY, ALL OF WHICH LICENSEE IS OBLIGATED TO OBTAIN, IF NECESSARY.

**5.1.1.** NO PORTION OF ANY OF THE LICENSED MATERIALS SHALL BE INCORPORATED INTO A LOGO, TRADEMARK OR SERVICE MARK OF LICENSEE OR ANY THIRD PARTY.

#### **5.2. EVOX Trademarks –**

**5.2.1.** Subject to all of the conditions of this Agreement, EVOX hereby grants to Licensee a non-exclusive, non-transferable, revocable license to use the EVOX Trademarks (the “EVOX Trademarks”) within the Scope of Use, on any webpage that displays any of the Licensed Materials and to sublicense such rights to its Sublicensees or any third party users of Licensed Materials, only as specifically authorized under this Agreement. Immediately upon the termination of this Agreement for any reason, all rights and license granted hereunder shall terminate and immediately revert to EVOX and Licensee, at its own expense, will immediately discontinue all use of Licensed Materials and EVOX Trademarks. EVOX may modify or update its EVOX Trademarks from time to time. Licensee shall (and Licensee shall cause Sublicensees or any third party users of Licensed Materials under this Agreement to) implement and use any update to the EVOX Trademarks within a reasonable time after receipt of a copy of the updated EVOX Trademark from EVOX. Licensee shall not use any of EVOX’s trade names, trademarks or service marks in any manner not expressly permitted hereunder without EVOX’s

prior written approval, which approval may be withheld at EVOX’s sole discretion.

**5.3.** Licensee Trademarks - Subject to the terms and conditions of this Agreement, Licensee hereby grants to EVOX a non-exclusive, non-transferable, non-sublicenseable, revocable license to use, publish and display one or more trademarks designated by Licensee (the “Licensee Trademarks”) in marketing activities. All use of the Licensee Trademarks shall be subject to Licensee’s approval, which approval may be withheld at Licensee’s sole discretion.

#### **6. COPYRIGHTS**

**6.1.** Copyright Notice - Unless otherwise directed by EVOX, Licensee will include on each image of the Licensed Materials that Licensee uses, EVOX’s copyright notice, as follows:

**6.1.1.** Display of Copyright – The Licensed Materials will be delivered and/or made available to Licensee with EVOX’s copyright notice included on such Licensed Materials. Unless instructed otherwise by EVOX, Licensee shall clearly display, retain and maintain such copyright notice on any and all permitted uses of the Licensed Materials and related materials, or any portion thereof, and will not alter, remove, hide or otherwise modify such notice.

**6.1.2.** The following copyright notice will also be included in the legal notices section of any website or system and shall also be included in all the metadata/meta tags where Licensed Materials are displayed by Licensee or a Sublicensee: “NOTICE: The automotive images or video contained herein are owned by EVOX Productions LLC (“EVOX”) and are protected under United States and international copyright law.”

**6.1.3.** Changes to Copyright Notice Requirements – Such notice shall not be modified or altered by Licensee or any Sublicensee or any third party users of Licensed Materials under this Agreement without the prior written consent of EVOX; provided, however, EVOX may update the foregoing copyright notice requirements from time to time by providing at least ninety (90) days prior written notice to Licensee.

#### **7. UNAUTHORIZED USE/FURTHER RESTRICTIONS**

**7.1.** Unauthorized Use - The parties agree that upon any unauthorized use by Licensee (or by any other third party that may be authorized under this Agreement) or as a result of other violations of this Agreement, EVOX shall be entitled to exercise all rights and remedies available to it, including, as applicable, any claims for copyright infringement. Licensee further acknowledges that any infringement, misappropriation or other violation by Licensee of EVOX’s proprietary rights is likely to cause immediate and irreparable injury to EVOX and that, in the event of any such breach, EVOX shall be entitled to seek injunctive relief in addition to any and all other remedies available at law or in equity.

**7.2.** Notice of Unauthorized Use - Licensee will notify EVOX immediately of any unauthorized possession or use of the Licensed Materials, or any part thereof, or EVOX’s trademarks or EVOX’s confidential information of which Licensee becomes aware.

#### **8. Delivery Method, Schedule, Confirmation and File Naming**

**8.1.** Delivery Method: Files will be delivered via FTP.

**8.2.** Delivery Schedule: Licensed Materials, to the extent available on the Effective Date, will be made available via FTP within 7 days following the Effective Date. Ongoing deliveries of new imagery will generally be made available via FTP at the frequency identified on Schedule 1: Order Schedule.

**8.3.** DELIVERY CONFIRMATION: Each future delivery will be recorded by the following communication between EVOX and Licensee: Notification from EVOX - EVOX will notify Licensee when additional files are available for download via FTP, via an email sent

Licensee Initials: \_\_\_\_\_ EVOX Initials: \_\_\_\_\_

to Licensee Delivery E-mail Address designated in the Order Schedule. Notification from Licensee - Licensee will notify EVOX of receipt and acceptance or rejection of delivery of additional files via an email sent to "ail\_licensee@evox.com", and Licensee's failure to send such email within ten (10) business days of such delivery will be deemed acceptance of such files.

**8.4. File Naming:** EVOX will use an EVOX file naming convention and directory structure for delivery of all files, which Licensee acknowledges and agrees may change from time to time at EVOX's discretion; however, no such change will be made without advance written notice of ninety (90) days or more.

## **9. OWNERSHIP OF LICENSED MATERIALS**

**9.1. Title –** EVOX represents, warrants and asserts that it owns and has all U.S. copyrights to the Licensed Materials, including all Image Updates, or has the right to license the U.S. copyrights to the Licensed Materials, including all Image Updates.

**9.2. No Claim by Licensee –** Licensee agrees not to claim any title to the Licensed Materials or any derivative works thereof, and any EVOX Trademarks or any OEM's trademarks, trade names or services marks, trade secrets, or other EVOX intellectual property; nor shall Licensee claim any right to use or otherwise exploit such rights except as expressly permitted by this Agreement.

**9.3. Source of Licensed Materials -** Licensee shall license and obtain the Licensed Materials only from EVOX pursuant to this Agreement. Licensee shall not sublicense or provide the Licensed Materials from any other EVOX licensee or sublicensee or user of Licensed Materials.

**9.4. Mutual rights to Provide Products and Services –** Other than as may be expressly set forth herein, nothing in this Agreement shall limit or restrict either party from entering into any agreement or other arrangement with respect to any of its products or services with any Third Party.

## **10. GENERAL DUTIES OF LICENSEE**

**10.1. Recordkeeping -** During the Term and for a period of at least two (2) years following termination of this Agreement and expiration of all Sublicenses or use of Licensed Materials by any Third Party under this Agreement, Licensee will keep reasonably detailed records of its hosting and use of the Licensed Materials.

**10.2. Support -** Licensee is solely responsible, at its expense, for supporting, training and servicing its employees, agents, Sublicensees, any third party users of Licensed Materials under this Agreement and Consumers.

**10.3. Compliance with Law -** Licensee shall comply with all laws, regulations and other legal requirements applicable to Licensee and Licensee's performance of this Agreement.

**10.4. Security Requirements -** Licensee agrees to implement and maintain at all times during the Term the following Security Requirements:

**10.4.1.** Licensee will protect the Licensed Materials using an industry standard firewall to safeguard against unauthorized third-party access to the Licensed Materials.

**10.4.2.** In no event will Licensee use measures less protective than those deemed as reasonable practices in its industry, and in no event will Licensee use any less care for or provide any less protection for the Licensed Materials than it uses to care for and protect Licensee's own digital and printed properties.

**10.4.3.** As a condition to this Agreement, Licensee will implement appropriate technologies and security procedures, to prevent the use of Licensed Materials by Third Parties through inline linking, hot-linking or similar methods of re-displaying or publishing any of the Licensed Materials or any portion thereof (all such methods existing now, or in the future, are referred to herein as "Inline Linking"). Licensee shall

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neither obtain or otherwise source the Licensed Materials, copies thereof, or other EVOX images and materials via Inline Linking nor assist any third party in furtherance of any of the foregoing activities. Licensee shall include, and shall cause each Sublicensee to include, a prohibition as provided by EVOX against Inline Linking and piracy of the Licensed Materials, including without limitation, in the terms of service for any website on which the any of the Licensed Materials are displayed. For the avoidance of doubt, any failure by Licensee to adhere to the conditions set forth in this paragraph, shall give EVOX the right to pursue all rights and remedies available to it under this Agreement, including without limitation, claims for copyright infringement.

## **11. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF LICENSEE**

**11.1. No Breach or Conflict -** Licensee represents and warrants that it is not under any obligation or restriction, nor will it assume any obligation or restriction, that would in any way materially interfere with, be inconsistent with, or present a conflict of interest concerning this Agreement and its subject matter, or preclude Licensee from performing any of Licensee's duties hereunder.

**11.2. Authority.** Licensee represents and warrants that it has the full right, power and authority to enter into and perform this Agreement.

## **12. GENERAL DUTIES OF EVOX**

**12.1. Support –** During the Term, EVOX will provide to Licensee limited access to telephone and e-mail support during EVOX's business hours to assist Licensee only, but not Sublicensees or any third party users of Licensed Materials under this Agreement or Consumers, with questions about the Licensed Materials.

**12.2. Compliance with Law -** EVOX will comply with all laws, regulations and other legal requirements applicable to EVOX and EVOX's performance under this Agreement.

**12.3. Limited Responsibility -** The sole responsibility of EVOX under this Agreement is to provide the Licensed Materials to Licensee, and EVOX shall not be responsible for Licensee's or any Sublicensee's or any third party users of Licensed Materials under this Agreement implementation or use of the Licensed Materials.

**12.4. Authority.** EVOX represents and warrants that it has the full right, power and authority to enter into and perform this Agreement.

**12.5. Licensed Materials -** Licensed Materials may be provided only to the extent made generally available in the AIL™. Licensed Materials specifications described below are subject to change at EVOX's discretion provided that Licensee shall be given a minimum of 90 days notice prior to such change. In the event EVOX issues an update to the Licensed Materials, Licensee agrees to implement such update within ninety (90) days from the receipt of such updated Licensed Materials. In the event that EVOX has delivered or otherwise provided access to EVOX Images and/or video other than Licensed Materials to Licensee, Licensee agrees not to download, transfer or otherwise use such Images and/or video.

## **13. FEES**

### **13.1. Payment Terms:**

**13.1.1. Payment of Fees -** Licensee will pay all amounts payable hereunder in accordance with the applicable terms set forth in herein but in no event later than thirty (30) days following the applicable invoice date that is submitted to Licensee for payment. Any amount paid by Licensee is deemed earned by EVOX upon receipt.

**13.1.2. Late Payment -** Without limiting other remedies available to EVOX under this Agreement, interest calculated at the rate of 1.5% per month fee, or, if lower, the maximum allowed by law, will be applied to all late payments, reasonable collection fees and

Licensee Initials: \_\_\_\_\_ EVOX Initials: \_\_\_\_\_



if not cured within fifteen (15) days after notice from EVOX, EVOX reserves the right to stop deliveries until all late payments are received reasonable attorneys' fees incurred by EVOX.

**13.1.3. Costs of Collections** - Licensee shall be liable, and reimburse EVOX, for all reasonable collection fees and reasonable attorneys' fees payable by EVOX in connection with enforcing Licensee's performance of its payment obligations set forth in this Agreement.

**13.2. Audit Rights** - No more than once during each 12-month period during the Term and for a period of twelve (12) months following the expiration this Agreement or the last Sublicense or Third Party user of the Licensed Materials, as applicable, EVOX will have the right to examine and audit all of Licensee's relevant books, records and accounts, during Licensee's normal business hours and upon reasonable advance notice, to verify Licensee's compliance with the terms of this Agreement and Licensee's payments hereunder. If the results of the examination or audit show a shortfall of any fees due to EVOX hereunder (other than shortfalls that are the result of a good faith dispute between the parties), Licensee shall immediately pay EVOX the full amount of any shortfall revealed by an audit, plus interest and late payment fees specified in Section 13.1 of this Agreement. Further, if the results of any examination or audit reveal that Licensee has underpaid, by three percent (3%) or more of the amounts properly due to EVOX for the period covered by the audit, Licensee shall reimburse EVOX for the costs of the audit; otherwise, EVOX shall pay for the costs of the audit.

**13.3. Taxes** - Licensee is responsible for the payment of all applicable taxes (including sales, use, property, excise, value-added and gross receipts, but not including taxes based on EVOX's net income or gross revenues) and import duties and fees levied on Licensed Materials and any other services and software provided under this Agreement.

**13.4. Fee Increases** - On the anniversary date of this Agreement, and on each subsequent anniversary date of this Agreement, Fees shall increase by the change in the Consumer Price Index ("CPI") for all items during the applicable period.

**13.5. Fees for Overlapping or Duplicate Grant of Rights** - Even if Licensee or a Sublicensee or any third party users of Licensed Materials under this Agreement is also granted rights from a third party to some or all of the Licensed Materials, Licensee will remain liable for payment to EVOX of the full amount of fees due under this Agreement.

#### **14. WARRANTY DISCLAIMERS**

**14.1. No Warranty** - LICENSEE ACKNOWLEDGES AND AGREES THAT EXCEPT AS MAY OTHERWISE BE EXPRESSLY PROVIDED HEREIN, THE LICENSED MATERIALS ARE PROVIDED "AS IS"; THAT EVOX MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE ACCURACY, COMPLETENESS OR ACCURACY OF THE LICENSED MATERIALS; AND THAT EXCEPT AS MAY OTHERWISE BE EXPRESSLY PROVIDED IN THIS AGREEMENT ALL WARRANTIES, CONDITIONS, REPRESENTATIONS AND GUARANTEES, WHETHER EXPRESS OR IMPLIED, AND WHETHER ARISING BY LAW, CUSTOM, ORAL OR WRITTEN STATEMENTS OF EVOX OR ITS AGENTS, EMPLOYEES OR OTHER REPRESENTATIVES, OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT) ARE HEREBY EXCLUDED AND DISCLAIMED. WITHOUT LIMITING THE FOREGOING, EVOX EXPRESSLY DISCLAIMS ANY WARRANTY OR LIABILITY WITH RESPECT TO DEFECTS IN THE DESIGN OR OPERATION OF ANY OF THE LICENSED MATERIALS. LICENSEE ACKNOWLEDGES THAT IT IS A SOPHISTICATED PARTY AND THAT IT RECOGNIZES AND AGREES THAT THE TERMS OF THIS SECTION ARE AN INTEGRAL PART OF EVOX'S PRICING AND AN IMPORTANT FACTOR IN EVOX'S WILLINGNESS TO ENTER INTO THIS AGREEMENT.

**14.2. Additional Licensed Materials, Unauthorized Alterations, etc.** - Without limiting other disclaimers by EVOX set forth in this Agreement, EVOX has no responsibility for discrepancies, inaccuracies, incompleteness or other problems in the Licensed Materials that are caused by alterations or modifications made by Licensee, Sublicensees, or any third party users of Licensed Materials under this Agreement, Consumers or any Third Party (including "hackers" and malicious third party code) or that are caused by hardware or software not provided by EVOX as part of the Licensed Materials in accordance with this Agreement.

**14.3. Additional Disclaimers** - Without limiting other disclaimers by EVOX set forth in this Agreement, with respect to the Licensed Materials, EVOX does not guarantee or warrant (a) that the specifications of the automobiles obtained for photography/imagery meet OEM specifications or any other vehicle specifications, (b) that the image or video files are representative of exact OEM products, (c) the accuracy of Carry-Over information, (d) the accuracy of the vehicle colors or (e) the vehicles covered or included within Licensed Materials. The vehicles included in the Automotive Image Library shall be determined by EVOX at its sole discretion, or (f) that the manufacturers of the vehicles that are the subject of the Licensed Materials grant the requisite permissions to take the copyrighted images.

**14.4. Carry-Over Information** - Selection of Carry-Overs is made at EVOX's sole discretion based in part on analysis of information from third parties. Carry-Overs may not be accurate for later Model Year trim or option level they are representing.

#### **15. LIMITATION OF LIABILITY.**

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT OR OTHERWISE, OTHER THAN LIABILITY WITH RESPECT TO DEFENSE AND INDEMNITY OBLIGATIONS SET FORTH IN THIS AGREEMENT INCLUDING SECTIONS 16.1 AND SECTION 16.2, OR A VIOLATION BY EITHER PARTY OF SECTIONS 5 (TRADEMARKS), 6 (COPYRIGHTS) OR 7 (UNAUTHORIZED USE/FURTHER RESTRICTIONS), IN NO EVENT SHALL EVOX, OR ANY OF ITS SUBCONTRACTORS, EMPLOYEES, REPRESENTATIVES OR AFFILIATES BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY, WHETHER ARISING UNDER THIS AGREEMENT OR ANY OTHER AGREEMENT BETWEEN THE PARTIES, FOR (I) ANY CONSEQUENTIAL, INDIRECT, PUNITIVE, INCIDENTAL, EXEMPLARY OR SPECIAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE (AND WHETHER OR NOT EVOX OR LICENSEE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), WHETHER BASED UPON LOST GOODWILL, LOST PROFITS, LOSS OF USE OF MONEY, LOSS OF DATA OR INTERRUPTION IN ITS USE OR AVAILABILITY, STOPPAGE OF WORK, IMPAIRMENT OF ASSETS OR OTHERWISE, (II) ANY COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS, SERVICES OR RIGHTS OR (III) ANY AMOUNT IN EXCESS OF THE AGGREGATE AMOUNT OF FEES PAID TO EVOX HEREUNDER DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE THAT THE CLAIM GIVING RISE TO LIABILITY AROSE; PROVIDED, HOWEVER, THE LIMITATION OF THIS SUBSECTION (III) SHALL NOT SERVE TO LIMIT EVOX'S RIGHT TO RECOVER FOR FEES OWED BUT NOT PAID NOR SHALL THE RECOVERY OF SUCH OWED AND UNPAID FEES COUNT AGAINST SUCH CAP ON EVOX'S RECOVERABLE DAMAGES. NOTWITHSTANDING ANY OF THE FOREGOING, EVOX SHALL NOT BE LIABLE FOR ANY CLAIMS ARISING OUT OF FALSE ADVERTISING OR TRUTH IN ADVERTISING CLAIMS REGARDING THE SALE OR LEASE OF AN AUTOMOTIVE VEHICLE.

#### **16. INDEMNITIES**

**16.1. By Licensee** - Licensee agrees to defend, indemnify and hold EVOX, its employees, officers, directors, subcontractors and agents harmless from and against any and all losses, costs, damages, claims,

Licensee Initials: \_\_\_\_\_ EVOX Initials: \_\_\_\_\_

demands, liabilities, actions, judgments and expenses (including, without limitation, reasonable attorneys' fees) suffered or incurred by EVOX arising out of (i) any Third Party claim related to Licensee's or any Sublicensee's use of the Licensed Materials in violation of this Agreement or infringement by any of the Authorized Licensee Products of a Third Party's intellectual property rights or (ii) any act or omission by Licensee or any Sublicensee relating to any infringement of EVOX's intellectual property rights.

**16.2.** By EVOX - EVOX agrees to defend, indemnify and hold Licensee, its employees, officers, directors, subcontractors and agents, harmless from and against any and all Third Party claims, demands, liabilities, actions, judgments and expenses (including, without limitation, reasonable attorneys' fees) suffered or incurred by Licensee arising out of the infringement or alleged infringement by EVOX of the U.S. copyright of any Third Party. EVOX shall not have any indemnity obligations hereunder for any claims of infringement that are based on: (i) a modification of the Licensed Materials not authorized under this Agreement, (ii) the use of a prior or modified version of the Licensed Materials (if the infringement claim could have been avoided by an updated version of such Licensed Materials provided by EVOX), (iii) use of the Licensed Materials in a manner not expressly authorized by this Agreement, (iv) activities of Licensee or its Sublicensees or parties granted rights in the Licensed Materials by Licensee in breach of this Agreement or (v) use of the Licensed Materials in combination with any other products, content or materials (if the infringement claim relates to such combination), or (vi) any claim by an automotive manufacturer with respect to its rights to the Licensed Materials or anything relating to such images, including all clearance rights and anything related to any intellectual property claim.

**16.3.** Remedies - EVOX further agrees that if Licensee is enjoined, prohibited or limited from using any of the Licensed Materials due to an actual or claimed direct infringement by the Licensed Materials of a U.S. copyright, EVOX may, at its option, either (i) procure for Licensee, at EVOX's expense, the right to continue to use such Licensed Materials, or (ii) replace or modify such Licensed Materials, at EVOX's expense, so that the Licensed Materials become non-infringing, or (iii) terminate the license granted herein as it relates to the infringing portion of the Licensed Materials and return to Licensee a pro-rata portion of paid License Fee(s) based upon the allocable percentage of the Licensed Materials subject to such infringement claim and the percentage balance of the Term in which Licensee would be prevented from using such Licensed Materials.

**16.4.** Procedure. The party entitled to indemnification ("Indemnified Party") agrees that the party providing indemnification ("Indemnifying Party") may assume sole and exclusive control over the defense and settlement of any claim with respect to which the foregoing indemnity obligations apply, so long as there is not a conflict of interest in such defense; provided, however, that the Indemnifying Party will not enter into any settlement that adversely affects Indemnified Party's rights or interests, imposes any liability or obligation on the Indemnified Party or contains any admission or acknowledgement of wrongdoing by the Indemnified Party without the prior written consent of the Indemnified Party. The Indemnified Party shall promptly notify the Indemnifying Party of any claim against it of which it becomes aware, provided, however, that the Indemnifying Party's obligations shall not be affected by any delay or failure in providing such notice unless and then only to the extent that the Indemnifying Party reasonably demonstrates that the defense or settlement of the claim was materially prejudiced by the delay in notice. The Indemnified Party will provide reasonable cooperation to the Indemnifying Party in connection with the defense or settlement of any such claim. The Indemnified Party will be entitled to participate in the defense of any such claim at its sole cost and expense.

## **17. TERMINATION**

**17.1.** Termination for Cause - Either party will be entitled to terminate this Agreement by notice in writing to the other Party if the other Party breaches any material term of this Agreement, unless the breach is capable of remedy, and the breaching party remedies the breach within forty-five (45) days after receipt of notice thereof from the non-breaching Party. In addition, either party may terminate this Agreement upon notice to the other party in the event such party: (i) ceases to do business, or otherwise terminates its business operations; or (ii) becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such party.

**17.2.** Upon Termination or Expiration - If this Agreement is terminated in accordance with Section 17.1 hereof, or expires, (i) Licensee will, within thirty (30) days of termination, pay all sums then currently due under this Agreement and continue to pay all sums due under any Sublicenses or grant of usage rights that continue beyond the termination or expiration date, (ii) Licensee will return (or provide written notice of destruction as EVOX may direct) the Licensed Materials and any modifications or derivatives thereof, any and all of EVOX's confidential information and promotional and other materials relating to EVOX or the Licensed Materials in Licensee's possession or control and permanently delete the Licensed Materials from its computer systems and all other electronic or digital media in Licensee's possession or control in which such Licensed Materials are stored in each case except to the extent necessary to retain and continue to use any Licensed Materials to perform Licensee's obligations under any Sublicenses or any third party use of Licensed Materials under this Agreement then in effect at the time of such expiration or termination, and (iii) Licensee will, within thirty (30) days, provide EVOX with a copy of each Sublicense or any third party users of Licensed Materials under this Agreement remaining in effect after the termination or expiration of this Agreement. Upon EVOX's written request at any time following termination or expiration, Licensee shall terminate any and all Sublicenses or any agreements with third party users of Licensed Materials under this Agreement specified by EVOX, provided, unless otherwise agreed by the Sublicensee or applicable agreement, such termination shall not be effective until permissible in accordance with the terms of such Sublicense(s) or agreements. In no event shall EVOX have any obligation hereunder or otherwise to provide any Licensed Materials or any other product or service to (a) a Sublicensee of any terminated or cancelled Sublicense or (b) a Sublicensee of any Sublicense or (c) a cancelled or terminated third party user of Licensed Materials under this Agreement of which Licensee has not provided EVOX a copy within thirty (30) days following the termination or expiration of this Agreement; provided, further, EVOX shall have no obligation hereunder to provide any Licensed Materials that were allegedly or otherwise infringing (or any replacement or modification thereof) to any Sublicensee or any third party users of Licensed Materials under this Agreement if EVOX has elected to terminate the Agreement pursuant to Section 16.3; nor shall EVOX be obligated to procure for any Sublicensee or any third party users of Licensed Materials under this Agreement the right to continue to use such Licensed Materials.

**17.3.** Termination Not the Sole Remedy. Termination is not the sole remedy under this Agreement and, whether or not termination is effected, all other remedies will remain available.

**17.4.** Survival - The provisions of Appendix 1, Sections 1, 5.1, 5.2, 7.1, 9.1, 9.2, 9.4, 10.1, 10.3, 11.1, 11.2, 12.2, 13.1 through 13.5, 14, 15, 16, 17.2, 17.3, 17.4, 18 and 19 shall survive termination or expiration of this Agreement. To the extent that sublicense rights or third party usage may be granted under this Agreement, this Agreement, as it



relates to those Sublicenses or usage, will survive through expiration of those Sublicenses or usage.

#### **18. CONFIDENTIAL INFORMATION.**

"Confidential Information" means any and all confidential, proprietary and/or trade secret information clearly identified by the disclosing party or otherwise reasonably deemed as confidential at the time of disclosure. The terms of this Agreement shall be deemed Confidential Information. Each party may use Confidential Information of the other party only for the purpose of exercising any of its rights or performing its obligations under this Agreement. The receiving party will not disclose the Confidential Information of the disclosing party to any Third Party except the receiving party's employees, contractors and agents who have a need to know and are bound by the terms and conditions of this Section 18.

This obligation of confidentiality shall not apply to information which is: (i) publicly available other than by breach of a duty of confidentiality to the disclosing party; (ii) rightfully received by the receiving party without restriction on use or disclosure from a Third Party without breach of a duty to the disclosing party; (iii) independently developed by the receiving party without access to the Confidential Information of the disclosing party; (iv) rightfully known to the receiving party without restriction on use or disclosure prior to first receipt from the disclosing party; or (v) any portion of Confidential Information which is required to be disclosed in response to a rule, regulation or valid order of a court or government agency, provided that the receiving party provides prompt written notice to the disclosing party, to the extent permitted by law, so that it may seek a protective order and the receiving party provides reasonable assistance to the disclosing party in seeking such a protective order.

#### **19. GENERAL**

**19.1. Notice** - All notices, demands, requests, consents, approvals or other communications (collectively, "Notices") required or permitted to be given hereunder or which are given with respect to this Agreement will be in writing and may be personally served by confirmed facsimile or by reputable courier with tracking capabilities, addressed as follows:

**19.1.1.** If to EVOX: Name, Address ("Notification Address"), Phone Number and Fax Number as shown on Page 1 of this Agreement;

**19.1.2.** If to Licensee: Name, Address ("Notification Address"), Phone Number and Fax Number as shown on Page 1 of this Agreement, or to such other address or person as either Party will have specified most recently by written notice provided in accordance with this Section. Notice will be deemed given (i) on the date of service if personally served, sent by courier or sent by facsimile, (ii) on the third business day after deposited in the United State mail, postage prepaid and (iii) on the business day after sent by nationally recognized overnight courier, charges prepaid, return receipt requested.

**19.2. Independent Contractors** - EVOX and Licensee are independent contractors under this Agreement, and nothing herein may be construed to create a partnership, joint venture, employment or agency relationship between the Parties. Except as expressly provided in this Agreement, neither Party is granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of the other Party.

**19.3. Assignment** - Neither Party may assign this Agreement or any right herein or delegate any duty hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld; provided, however, that, except for assignment or delegation in connection with any acquisition of Licensee by an EVOX Competitor or an EVOX Competitor's affiliates (which shall require the prior consent of EVOX), either Party will be entitled to assign, delegate or transfer this Agreement (in whole and not part) to any parent or subsidiary of or entity under its common control with such Party or to EVOX Productions, LLC. Confidential License Agreement

any purchaser of all or a majority of such Party's assets or a controlling interest in such Party without approval of the other Party; provided, further, that in the event of such an assignment by Licensee to another customer or licensee of EVOX, Licensee (or its assignee) shall guarantee that all payments of Fees under this Agreement shall continue to be paid in full for the duration of the Term and, as applicable, during the remainder of any the term of any Sublicense or any third party use of Licensed Materials under this Agreement that extends beyond the Term. Any purported assignment or delegation in violation of this Section 19.3 shall be null and void.

**19.4. Governing Law/Venue** - This Agreement is made under and will be construed under the laws of the State of California without regard to the conflicts of laws provisions of those laws. The parties hereby submit to the sole and exclusive jurisdiction of the state and federal courts located in Los Angeles County, California.

**19.5. Amendment** - No amendments, modifications, or supplements to this Agreement will be binding on either Party unless in writing and signed by an authorized representative of such Party. The authorized representative of EVOX shall only be its Chief Executive Officer.

**19.6. Waiver** - The waiver of any breach hereunder will not constitute the waiver of any other or subsequent breach.

**19.7. Severability** - If any term contained in the Agreement is found to be invalid, illegal or unenforceable for any reason, the remainder of the provisions shall continue in full force and effect, and it is in the intent of the parties that a valid, legal and enforceable provision with the same intent and economic effect be substituted.

**19.8. Headings** - The descriptive headings of the several Sections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement and will not affect the interpretation hereof.

**19.9. Counterparts** - This Agreement may be executed in two or more identical counterparts (or facsimiles thereof), each of which will be an original but which collectively will constitute one and the same instrument.

**19.10. Construction** - The Parties further acknowledge that they have thoroughly reviewed this Agreement and bargained for the terms herein. Accordingly, this Agreement will be construed without regard to the party or parties responsible for its preparation and will be deemed to have been prepared jointly by the parties.

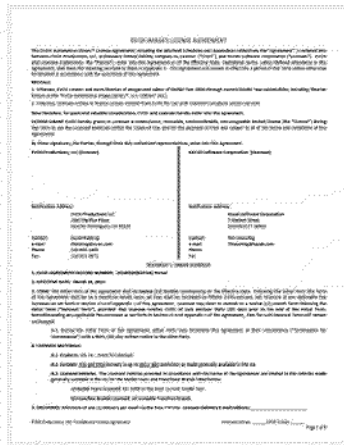
**19.11. Entire Agreement** - This Agreement and its Schedules, Exhibits and Appendices, are the entire agreement of the Parties hereto in relation to the subject matter hereof and supersede any and all prior and contemporaneous agreements, understandings, and representations, whether oral or written, and all course of conduct in relation to the subject matter hereof. In the event Licensee or any Sublicensee or user of Licensed Materials under this Agreement issues a purchase order or other instrument covering the subject matter of this Agreement, it is understood and agreed that the terms of such purchase order or other instrument are hereby rejected and will not form a part of this Agreement. No subsequent agreement or written instrument (including any purchase orders) will have any legal force or effect unless expressly agreed to in writing by the Chief Executive Officer of EVOX.

# 20140305(KAYAK) Portal










EchoSign Document History

March 18, 2014

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By: David Falstrup (contracts@evox.com)  
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Signature Date: March 18, 2014 - 1:53 PM PDT - Time Source: server - IP address: 216.14.3.226
-  Signed document emailed to David Falstrup (contracts@evox.com) and Tim Knowing (tknowling@kayak.com)  
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